

## **EXHIBIT F**

ORIGINAL

1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MARYLAND  
3

4 XEROX CORPORATION :

5 Plaintiff :

6 Vs. :

CIVIL ACTION NO.

7 PHOENIX COLOR CORPORATION :

L 02CV 1734

8 and :

9 TECHNIGRAPHIX, INCORPORATED :

10 Defendants :

11  
12  
13 Deposition of JAMES T. BURKEY, taken on  
14 Monday, March 3, 2003, at 11:00 a.m., at the law  
15 offices of Piper Rudnick, LLP, 6225 Smith Avenue,  
16 Baltimore, Maryland, before Bonnie L. Russo,  
17 Notary Public.

18 -----  
19  
20 Reported by:

21 Bonnie L. Russo

CRC-SALOMON  
Baltimore, Maryland  
Phone (410) 821-4888 Fax (410) 821-4889

1 name of customer. These are considered credit  
2 files. They are considered confidential files.

3 Q. Okay. Do you know if this particular  
4 file was filed under the name of a particular  
5 customer?

6 A. There were two files. One under the  
7 name of Technigraphix and one under the name  
8 Phoenix Color Corp.

9 Q. Do you know which one this is?

10 A. I believe it's Phoenix. It is probably  
11 intermingled.

12 Q. Take a look at the second page of the  
13 right corner and I ask whether you can identify  
14 what file this is?

15 A. It's Technigraphix.

16 Q. And how are you basing that on? What  
17 are you basing that on?

18 A. In fact, it says, "Do not confuse with  
19 Technigraphix."

20 Q. Let's look at the third page. Looking  
21 at right now what is identified as an October 8,

1 1999 e-mail from you to Denise Holmes, do you  
2 recall sending this e-mail?

3 A. I would have to say yes.

4 Q. The e-mail references a telephone  
5 conversation.

6 Do you recall this telephone  
7 conversation?

8 A. Not really. This conversation was in  
9 October of '99.

10 Q. Sure. Do you recall whether you had a  
11 conversation with Ms. Holmes about this subject  
12 matter?

13 A. I'm sure I did.

14 Q. There are a number of people on this  
15 e-mail strip. Who is Temenia Baxter?

16 A. Was the finance center manager in Dallas  
17 operations.

18 Q. Why would she need to be on that e-mail?

19 A. Because that is evidently where the  
20 order or lease, whatever was being considered was  
21 sent.

1           A. I can't really give you a good answer on  
2     that.

3           Q. Why did you ask for them to be  
4     rewritten?

5           A. Because they are -- obviously I had  
6     knowledge that it was Technigraphix that was the  
7     customer and that their credit was not  
8     sufficient. Only Phoenix Color Corp was.

9           Q. So as of October 8, 1999 Technigraphix  
10    was the customer, right?

11          A. Phoenix Color Corp was the customer.  
12    That's what was credit approved in this document.

13          Q. How about the day before this  
14    document? What was your understanding as to who  
15    the customer was?

16          A. My understanding there were orders  
17    in-house. They must have been written in the  
18    name of Technigraphix.

19          Q. Okay. And you told them they needed to  
20    rewrite them in the name of Phoenix Color Corp?

21          A. Or corporate guarantee provided by

1 MR. FRIEDMAN: Ask your question again  
2 or read it back if you want.

3 BY MR. GAUMONT:

4 Q. Do you have an opinion as to whether in  
5 accordance with Xerox's credit policies, as they  
6 existed at the time of this e-mail, whether Xerox  
7 could hold Phoenix Color Corp liable for  
8 contracts executed in the name of Technigraphix  
9 when there was no corporate guarantee for Phoenix  
10 Color?

11 MR. FRIEDMAN: Objection.

12 BY MR. GAUMONT:

13 Q. You can answer.

14 THE WITNESS: It is my opinion Xerox  
15 could not hold Phoenix Color liable if there was  
16 no Phoenix Color involvement.

17 BY MR. GAUMONT:

18 Q. And by involvement what do you mean by  
19 involvement?

20 A. No guarantee.

21 Q. Why is that?

1 A. It's a contract.

2 Q. What do you mean by it's a contract?

3 MR. FRIEDMAN: Objection.

4 THE WITNESS: It's a contract between  
5 Technigraphix and Xerox Corporation.

6 BY MR. GAUMONT:

7 Q. And do you understand Phoenix Color Corp  
8 and Technigraphix as being two distinct  
9 corporations?

10 A. I understand --

11 MR. FRIEDMAN: I object.

12 THE WITNESS: I understand they are two  
13 separate corporations.

14 BY MR. GAUMONT:

15 Q. And in your practice as -- I  
16 apologize. I forgot your title.

17 What were you, credit risk manager at  
18 this time, right?

19 A. I had responsibility for credit.

20 Q. In your practice as the individual  
21 responsible for providing credit on behalf of

1                   It says, wrote off 864.54 K. REC  
2                   period 110.6 K."

3                   Can you tell me what this means?

4                   A. It means the total write-off was  
5                   \$864,000 and what was recovered was \$110,600.

6                   Q. This was back in '98; is that right?

7                   A. Date of this is 12-14-98.

8                   Q. I mean if you were -- does this mean you  
9                   wrote off 864,000 in bad debt and you received  
10                  only 110.6 from Technigraphix; is that right?

11                  A. That's what it says.

12                  Q. Why did you continue doing business with  
13                  them?

14                  A. I wasn't.

15                  Q. Was this part of your determination that  
16                  you were not going to approve orders in the name  
17                  of Technigraphix?

18                  A. Yes.

19                  Q. Skip through the next pages here.

20                         I would like to go to the next e-mail.  
21                         This is an e-mail from you to Pat Elizondo.



1 MR. FRIEDMAN: Could you date it,  
2 please.

3 MR. GAUMONT: October 28, 1998.

4 BY MR. GAUMONT:

5 Q. "If we do business with the account the  
6 requirements are as follows," and then you give  
7 requirements including a promissory note, points,  
8 a few other terms and conditions.

9 Again, was this because you believed  
10 that Technigraphix at this point had a poor  
11 credit history and didn't warrant more favorable  
12 conditions?

13 A. That's correct.

14 Q. Let's continue going through.

15 Next e-mail, June 25, 1998 from Jim  
16 Burkey to Craig Wishner.

17 Do you know who Craig Wishner is?

18 A. Yes.

19 Q. Who was he?

20 A. I believe at the time was a sales rep.

21 Q. Do you know if he was Bruce Nussbaum's

1 sales manager at the time?

2 A. I can't say that.

3 Q. He could have been a sales manager?

4 A. Could have been.

5 Q. Again, it puts -- it has various  
6 conditions, including paying off promissory  
7 notes, points, down payments and so forth.

8 Third paragraph says, "Customers are a  
9 chronic late payer. Customer owned Technigraphix  
10 of Georgia and Xerox wrote off \$840,000. There  
11 have been numerous promissory notes to clear  
12 aging invoices."

13 Again, was this a factor in you not  
14 giving Technigraphix more favorable conditions?

15 A. That's correct.

16 Q. Do you know whether though after June of  
17 '98 Xerox contracted with Technigraphix in the  
18 name of Technigraphix?

19 A. I do not know that.

20 Q. Wouldn't it, however, have been  
21 processed for your approval if a sales

1 representative attempted to commit Xerox to a  
2 contract with Technigraphix because at that point  
3 wasn't -- didn't Technigraphix already have  
4 sufficiently bad credit that any order would have  
5 been processed through your department?

6 MR. FRIEDMAN: Objection.

7 THE WITNESS: Technigraphix wasn't -- I  
8 do not know if there were any additional orders  
9 taken. They obviously were not supposed to be  
10 taking additional orders without these  
11 requirements being met.

12 BY MR. GAUMONT:

13 Q. Why were you even allowing them to take  
14 additional orders at all?

15 A. I wasn't.

16 Q. Well, there were additional -- if they  
17 fulfilled the following requirements you would  
18 allow them to pay off -- you would allow them to  
19 take additional orders; isn't that right?

20 A. Yes.

21 Q. So you were conditionally at least

1 saying that Technigraphix --

2 A. Conditionally, yes.

3 Q. Why didn't you make the decision that's  
4 it? Xerox is not going to contract with  
5 Technigraphix at all?

6 MR. FRIEDMAN: Objection.

7 THE WITNESS: I don't have the right of  
8 final approval.

9 BY MR. GAUMONT:

10 Q. Did you make that recommendation to  
11 anyone?

12 A. I do not recall if I did.

13 Q. Who does have the final approval?

14 A. The president of the corporation.

15 Q. The president of the corporation  
16 personally says that Xerox had to place orders  
17 with Technigraphix?

18 A. No.

19 Q. Okay.

20 A. Let me repeat the question. The  
21 president of the corporation did not have

1 anything to do with Technigraphix in approving  
2 anything.

3 Q. I certainly didn't think so.

4 A. I wasn't saying that.

5 Q. I didn't think you were. But did  
6 someone else tell you that orders with  
7 Technigraphix needed to be approved?

8 A. No.

9 Q. But you made the decision that if  
10 Technigraphix met certain conditions you would  
11 approve those orders?

12 A. Uh-huh.

13 Q. Okay.

14 A. Yes.

15 Q. In reference to the reference to a  
16 promissory note could you tell me how that came  
17 about? How did it come about that Technigraphix  
18 gave promissory notes to Xerox?

19 A. They didn't pay their invoices.

20 Q. So would the promissory notes then bind  
21 anyone personally?

1 A. No. Just the corporation.

2 Q. So you received extra security from the  
3 corporation if you had a promissory note in its  
4 name?

5 A. I do not know the type of promissory  
6 note they signed.

7 Q. Finally there is -- as we get through  
8 the end of the e-mails there is a document titled  
9 Technigraphix, Inc. Balance sheet showing year to  
10 date activity.

11 MR. FRIEDMAN: Is that pretty far  
12 down?

13 MR. GAUMONT: It is.

14 BY MR. GAUMONT:

15 Q. Do you know where Xerox received this  
16 document?

17 A. Well, it says we received this document  
18 from Denise Holmes.

19 Q. Do you know where she received it from?

20 A. I do not.

21 Q. And to make this easier, count the pages